

Short Title: Fiduciary Access to Digital Assets.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
ASSETS ACT AND MAKE CONFORMING AMENDMENTS TO THE GENERAL
STATUTES.

The General Assembly of North Carolina enacts:

PART I. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"CHAPTER 36F.

"REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015).

"§ 36F-1. Short title.

This ~~fact~~Chapter may be cited as the Revised Uniform Fiduciary Access to Digital
Assets Act (2015).

"§ 36F-2. Definitions.

~~In this fact~~The following definitions apply in this Chapter:

- (1) ~~"Account" means an~~Account. – ~~An~~ arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) ~~"Agent" means an~~Agent. – ~~An~~ attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) ~~"Carries" means engages~~Carries. – ~~Engages~~ in the transmission of an electronic communication.
- (4) ~~"Catalogue of electronic communications" means information~~Catalogue of

electronic communications. – Information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) ~~"[Conservator]" means a person appointed by a court to manage the estate of a living individual. The term includes a limited [conservator].~~
Reserved.

(6) ~~"Content of an electronic communication" means information~~Content of an
electronic communication. – Information concerning the substance or meaning of the communication ~~which~~which meets all of the following:

- a. Has been sent or received by a ~~user~~user.¹
- b. Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the ~~public;~~
~~and~~public.
- c. Is not readily accessible to the public.

(7) ~~"Court" means the [insert name of court in this state having jurisdiction in matters relating to the content of this act].~~Court. – The clerk of superior court or superior court judge as provided in G.S. 1-7, or other court having competent jurisdiction over the estate, trust, fiduciary, or user, as applicable, or other matters relating to the content of this Chapter.

(8) ~~"Custodian" means a~~Custodian. – A person that carries, maintains, processes, receives, or stores a digital asset of a user.

¹ Staff Note: The designators "a.," "b.," and "c." are substituted for the uniform act's designators "(A)," "(B)," and "(C)" in this subdivision and throughout the draft to conform to the numbering system used in the General Statutes.

- (9) ~~"Designated recipient" means a~~Designated recipient. – A person chosen by a user using an online tool to administer digital assets of the user.
- (10) ~~"Digital asset" means an~~Digital asset. – An electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (11) ~~"Electronic" means relating~~Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (12) ~~"Electronic communication" has~~Electronic communication. – Has the meaning set forth in 18 U.S.C. Section 2510(12)~~[, as amended]~~.
- (13) ~~"Electronic communication service" means a~~Electronic-communication service. – A custodian that provides to a user the ability to send or receive an electronic communication.
- (14) ~~"Fiduciary" means an~~Fiduciary. – An original, additional, or successor personal representative, ~~[conservator]~~guardian, agent, or trustee.
- (14a) Guardian. – A person appointed by a court to manage the estate of a living individual. The term includes a general guardian, a guardian of the estate, an interim guardian, and a standby guardian appointed under Chapter 35A of the General Statutes; and a guardian appointed for a Veterans Administration ward under Chapter 34 of the General Statutes.
- (15) ~~"Information" means data~~Information. – Data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- (16) ~~"Online tool" means an~~Online tool. – An electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service

agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) ~~"Person" means an~~Person. – An individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or ~~instrumentality, or other legal entity~~instrumentality, business trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

(18) ~~"Personal representative" means an~~Personal representative. – An executor, administrator, special administrator, or person that performs substantially the same function under a law of this State other than this ~~[act]~~Chapter.

(19) ~~"Power of attorney" means a~~Power of attorney. – A record that grants an agent authority to act in the place of a principal.

(20) ~~"Principal" means an~~Principal. – An individual who grants authority to an agent in a power of attorney.

(21) ~~[Protected person.]—An individual for whom a [conservator] has been appointed. The term includes an individual for whom an application for the appointment of a [conservator] is pending.~~

Reserved.

(21a) Receiver. -- A person appointed as a receiver under Chapter 28B for an absentee in military service or a permanent receiver under Chapter 28C for an absentee.

(22) ~~"Record" means information~~Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) ~~"Remote-computing service" means a~~Remote-computing service. – A custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14)~~[, as amended].~~

(24) ~~"Terms of service agreement" means an~~Terms-of-service agreement. – An agreement that controls the relationship between a user and a custodian.

(25) ~~"Trustee" means a~~Trustee. – A fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes ~~a successor trustee~~an original, additional, and successor trustee, whether or not confirmed by a court.

(26) ~~"User" means a~~User. – A person that has an account with a custodian.

(26a) Ward. – An individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.

(27) ~~"Will" includes a~~Will. – Includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

"§ 36F-3. Applicability.

(a) This ~~act~~Chapter applies ~~to~~to all of the following:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after [the effective date of this ~~act~~];[act]].

(2) A personal representative acting for a decedent who died before, on, or after [the effective date of this ~~act~~];[act]].

(3) A ~~[conservatorship] proceeding commenced~~guardian appointed before, on,
or after [the effective date of this ~~{act}]; and[act]].~~

(4) A trustee acting under a trust created before, on, or after [the effective date
of this [act]].

(b) This ~~{act}~~Chapter applies to a custodian if the user resides in this State or resided
in this State at the time of the user's death.

(c) This ~~{act}~~Chapter does not apply to a digital asset of an employer used by an
employee in the ordinary course of the employer's business.

"§ 36F-4. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose or not to disclose
some or all of the user's digital assets, including the content of electronic communications. If the
online tool allows the user to modify or delete a direction at all times, a direction regarding
disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of
attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) of this
section or if the custodian has not provided an online tool, the user may allow or prohibit in a
will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's
digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) of this section overrides a contrary
provision in a terms-of-service agreement that does not require the user to act affirmatively and
distinctly from the user's assent to the terms of service.

"§ 36F-5. Terms-of-service agreement.

(a) This ~~act~~Chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This ~~act~~Chapter does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

(c) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under ~~Section 4G.S. 36F-4.~~

"§ 36F-6. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this ~~act~~Chapter, the custodian may at its sole ~~discretion;~~discretion do any of the following:

(1) Grant a fiduciary or designated recipient full access to the user's ~~account;~~account.

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is ~~charged;~~or charged.

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this ~~act~~Chapter.

(c) A custodian need not disclose under this ~~act~~Chapter a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this ~~{act}Chapter~~ some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to ~~disclose:~~disclose any of the following:

(1) A subset limited by date of the user's digital ~~assets;~~assets.

(2) All of the user's digital assets to the fiduciary or designated ~~recipient;~~recipient.

(3) None of the user's digital ~~assets;~~ ~~or~~assets.

(4) All of the user's digital assets to the court for review in camera.

"§ 36F-7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the ~~custodian:~~custodian all of the following:

(1) A written request for disclosure in physical or electronic ~~form;~~form.

(2) A ~~{certified}~~certified copy of the death certificate of the ~~user;~~user.

(3) ~~A {certified} copy of [the letter of appointment of the representative or a small estate affidavit or court order];~~A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.

- (4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic ~~communications;~~ and communications.
- (5) If requested by the ~~custodian;~~ custodian, any of the following:
- a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's ~~account;~~ account.
 - b. Evidence linking the account to the ~~user;~~ or user.
 - c. A finding by the court ~~that;~~ of any of the following:
 1. ~~The~~ That the user had a specific account with the custodian, identifiable by the information specified in ~~subparagraph (A)~~ sub-subdivision a. of this subdivision.
 2. ~~Disclosure~~ That disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq. ~~[, as amended],~~ 47 U.S.C. Section 222 ~~[, as amended],~~ or other applicable ~~law;~~ law.
 3. ~~Unless~~ That, unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic ~~communications;~~ or communications.
 4. ~~Disclosure~~ That disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

"§ 36F-8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the ~~custodian~~custodian all of the following:

- (1) A written request for disclosure in physical or electronic ~~form~~form.
- (2) A ~~certified~~certified copy of the death certificate of the ~~user~~user.
- (3) A ~~certified copy of the letter of appointment of the representative or a small estate affidavit or court order~~certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.
- (4) If requested by the ~~custodian~~custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's ~~account~~account.
 - b. Evidence linking the account to the ~~user~~user.
 - c. An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the ~~estate~~estate.
 - d. A finding by the court ~~that~~of any of the following:
 1. ~~The~~That the user had a specific account with the custodian,

identifiable by the information specified in ~~subparagraph~~
(A); ~~or~~ sub-subdivision a. of this subdivision.

2. ~~Disclosure~~ That disclosure of the user's digital assets is
reasonably necessary for administration of the estate.

"§ 36F-9. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of
electronic communications sent or received by the principal and unless directed otherwise by the
principal or the court, a custodian shall disclose to the agent the content of an electronic
communication if the agent gives the ~~eustodian;~~ custodian all of the following:

- (1) A written request for disclosure in physical or electronic ~~form;~~ form.
- (2) An original or copy of the power of attorney expressly granting the agent
authority over the content of electronic communications of the
~~principal;~~ principal.
- (3) A certification by the agent, under penalty of perjury, that the power of
attorney is in ~~effect;~~ and effect.
- (4) If requested by the ~~eustodian;~~ custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or
account identifier assigned by the custodian to identify the
principal's ~~account;~~ or account.
 - b. Evidence linking the account to the principal.

"§ 36F-10. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power
of attorney, a custodian shall disclose to an agent with specific authority over digital assets or

1 general authority to act on behalf of a principal a catalogue of electronic communications sent or
2 received by the ~~principal~~principal, and digital assets, other than the content of communications,
3 of the principal if the agent gives the ~~custodian~~custodian all of the following:

4 (1) A written request for disclosure in physical or electronic ~~form~~form.

5 (2) An original or a copy of the power of attorney that gives the agent specific
6 authority over digital assets or general authority to act on behalf of the
7 ~~principal~~principal.

8 (3) A certification by the agent, under penalty of perjury, that the power of
9 attorney is in ~~effect~~and effect.

10 (4) If requested by the ~~custodian~~custodian, any of the following:

11 a. A number, username, address, or other unique subscriber or
12 account identifier assigned by the custodian to identify the
13 principal's ~~account~~or account.

14 b. Evidence linking the account to the principal.

15 **"§ 36F-11. Disclosure of digital assets held in trust when trustee is original user.**

16 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to
17 a trustee that is an original user of an account any digital asset of the account held in trust,
18 including a catalogue of electronic communications of the trustee and the content of electronic
19 communications.

20 **"§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee**
21 **not original user.**

22 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a
23 custodian shall disclose to a trustee that is not an original user of an account the content of an

electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the ~~eustodian~~custodian all of the following:

(1) A written request for disclosure in physical or electronic ~~form~~form.

(2) A ~~certified~~verified copy of the trust instrument ~~for a certification of the trust under [cite trust certification statute, such as Uniform Trust Code Section 1013]], or a certification of the trust under G.S. 36C-10-1013~~, that includes consent to disclosure of the content of electronic communications to the ~~trustee~~trustee.

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the ~~trust~~and trust.

(4) If requested by the ~~eustodian~~custodian, any of the following:

a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's ~~account~~or account.

b. Evidence linking the account to the trust.

"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the ~~eustodian~~custodian all of the following:

- (1) A written request for disclosure in physical or electronic ~~form~~; form.
- (2) A certified copy of the trust instrument ~~{or a certification of the trust under~~
~~{cite trust certification statute, such as Uniform Trust Code Section~~
~~4013}}~~; or a certification of the trust under G.S. 36C-10-1013.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists
and the trustee is a currently acting trustee of the ~~trust~~; and trust.
- (4) If requested by the ~~eustodian~~; custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or
account identifier assigned by the custodian to identify the trust's
~~account~~; or account.
 - b. Evidence linking the account to the trust.

"§ 36F-14. Disclosure of digital assets to ~~{conservator}~~ guardian of ~~{protected person}~~ ward.

(a) ~~After an opportunity for a hearing under {state conservatorship law},~~ Upon motion
of a guardian, the court may grant a ~~{conservator}~~ guardian access to the digital assets of a
~~{protected person}~~ ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall
disclose to a ~~{conservator}~~ guardian the catalogue of electronic communications sent or received
by a ~~{protected person}~~ ward and any digital assets, other than the ~~content~~ contents of electronic
communications, in which the ~~{protected person}~~ ward has a right or interest if the
~~{conservator}~~ guardian gives the ~~eustodian~~; custodian all of the following:

- (1) A written request for disclosure in physical or electronic ~~form~~; form.
- (2) A ~~{certified}~~ certified copy of the court order that gives the
~~{conservator}~~ guardian authority over the digital assets of the ~~{protected~~

1 ~~person~~; and ward.

2 (3) If requested by the ~~eustodian~~:custodian, any of the following:

3 a. A number, username, address, or other unique subscriber or
4 account identifier assigned by the custodian to identify the account
5 of the ~~{protected person}~~; or ward.

6 b. Evidence linking the account to the ~~{protected person}~~:ward.

7 (c) A ~~{conservator}~~:guardian with general authority to manage the assets of a
8 ~~{protected person}~~:ward may request a custodian of the digital assets of the ~~{protected~~
9 ~~person}~~:ward to suspend or terminate an account of the ~~{protected person}~~:ward for good cause. A
10 request made under this section must be accompanied by a ~~{certified}~~:certified copy of the court
11 order giving the ~~{conservator}~~:guardian authority over the ~~protected person's~~:ward's property.

12 "§ 36F-14.1. Disclosure of digital assets to court appointed receiver for military absentee or
13 missing person.

14 (a) After a hearing, the superior court may grant a receiver appointed for a military
15 absentee under Chapter 28B of the General Statutes or an absentee under Chapter 28C of the
16 General Statutes access to the digital assets of a military absentee or absentee.

17 (b) Unless otherwise ordered by the superior court or directed by the user, a custodian
18 shall disclose to a receiver the catalogue of electronic communications sent or received by a
19 military absentee or absentee and any digital assets, other than the contents of electronic
20 communications, in which the military absentee or absentee has a right or interest if the receiver
21 gives the custodian all of the following:

22 (1) A written request for disclosure in physical or electronic form.

(2) A certified copy of the court order that gives the receiver authority over the digital assets of the military absentee or absentee.

(3) If requested by the custodian, any of the following:

a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the military absentee or absentee.

b. Evidence linking the account to the military absentee or absentee.

(c) A receiver with general authority to manage the assets of a military absentee or absentee may request a custodian of the digital assets of the military absentee or absentee to suspend or terminate an account of the military absentee or absentee for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the receiver authority over the military absentee or absentee's property.

"§ 36F-15. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, ~~including~~including all of the following:

(1) The duty of ~~care~~care.

(2) The duty of ~~loyalty; and~~loyalty.

(3) The duty of confidentiality.

(b) ~~A~~All of the following apply to a fiduciary's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in ~~Section 4, G.S. 36F-4, is it is~~ subject to the applicable terms of ~~service~~service.

(2) ~~Is-It is~~ subject to other applicable law, including copyright ~~law~~law.

(3) ~~Is-It is~~ limited by the scope of the fiduciary's ~~duties; and~~duties.

(4) ~~May-It shall~~ not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, ~~{protected person},ward,~~ principal, or settlor has the right to access any digital asset in which the decedent, ~~{protected person},ward,~~ principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ~~{protected person},ward,~~ principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including ~~{this state's law on unauthorized computer access},G.S. 14-458.~~

(e) A fiduciary with authority over the tangible, personal property of a decedent, ~~{protected person},ward,~~ principal, or settlor:

(1) Has the right to access the property and any digital asset stored in it; and

(2) Is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including ~~{this state's law on unauthorized computer access},G.S. 14-458.~~

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied ~~by:~~by all of the following:

(1) If the user is deceased, a ~~{certified}~~certified copy of the death certificate of

1 the ~~user;~~user.

2 (2) A ~~[certified]~~certified copy of the ~~[letter of appointment of the~~
3 ~~representative or a small estate affidavit or court order,]~~letters of
4 administration or letters testamentary of the personal representative, a
5 certified copy of a small estate affidavit filed in accordance with G.S.
6 28A-25.1(b), a certified copy of a summary administration order described
7 in G.S. 28A-28-3, or a court order, power of attorney, or trust giving the
8 fiduciary authority over the ~~account; and~~account.

9 (3) If requested by the ~~custodian;~~custodian, any of the following:

- 10 a. A number, username, address, or other unique subscriber or
11 account identifier assigned by the custodian to identify the user's
12 ~~account;~~account.
- 13 b. Evidence linking the account to the ~~user; or~~user.
- 14 c. A finding by the court that the user had a specific account with the
15 custodian, identifiable by the information specified in
16 ~~subparagraph (A)-~~sub-subdivision a. of this subdivision.

17 **"§ 36F-16. Custodian compliance and immunity.**

18 (a) Not later than ~~[60]~~60 days after receipt of the information required under ~~Sections~~
19 ~~7 through 14,~~G.S. 36F-7 through G.S. 36F-14, a custodian shall comply with a request under this
20 ~~[act]~~Chapter from a fiduciary or designated recipient to disclose digital assets or terminate an
21 account. If the custodian fails to comply, the fiduciary or designated representative may apply to
22 the court for an order directing compliance.

23 (b) An order under subsection (a) of this section directing compliance must contain a

finding that compliance is not in violation of 18 U.S.C. Section 2702~~[, as amended]~~.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this ~~[act]~~Chapter.

(d) A custodian may deny a request under this ~~[act]~~Chapter from a fiduciary or designated representative for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) This ~~[act]~~Chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this ~~[act]~~Chapter to obtain a court order ~~which;~~which does all of the following:

(1) Specifies that an account belongs to the ~~[protected person]~~ward or ~~principal;~~principal.

(2) Specifies that there is sufficient consent from the ~~[protected person]~~ward or principal to support the requested ~~disclosure;~~and disclosure.

(3) Contains a finding required by law other than this ~~[act]~~Chapter.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this ~~[act]~~Chapter.

"§ 36F-17. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 36F-18. Relation to Electronic Signatures in Global and National Commerce Act.

This ~~[act]~~Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede

Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

~~["§ 36F-19. Severability.~~

~~If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]"~~

PART II. CONFORMING AMENDMENTS TO THE GENERAL STATUTES

SECTION 2. G.S. 14-458 reads as rewritten:

"§ 14-458. Computer trespass; penalty.

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

- (1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.
- (2) Cause a computer to malfunction, regardless of how long the malfunction persists.
- (3) Alter or erase any computer data, computer programs, or computer software.
- (4) Cause physical injury to the property of another.
- (5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data,

computer programs, or computer software residing in, communicated by,
or produced by a computer or computer network.

(6) Falsely identify with the intent to deceive or defraud the recipient or forge
commercial electronic mail transmission information or other routing
information in any manner in connection with the transmission of
unsolicited bulk commercial electronic mail through or into the computer
network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right
or permission of the owner to use a computer, or the person uses a computer in a manner
exceeding the right or permission, or (ii) the person uses a computer or computer network, or the
computer services of an electronic mail service provider to transmit unsolicited bulk commercial
electronic mail in contravention of the authority granted by or in violation of the policies set by
the electronic mail service provider.

...

(d) It is not a violation of this section for a person to act pursuant to Chapter 36F of
the General Statutes."

SECTION 3. G.S. 28A-13-3(a) reads as rewritten:

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a
court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint
personal representatives, a personal representative has the power to perform in a reasonable and
prudent manner every act which a reasonable and prudent person would perform incident to the
collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the

desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

(3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 4. G.S. 28B-6 reads as rewritten:

"28B-6. Powers and duties of receiver.

(a) Under the direction of a judge, the receiver shall administer the property of the absentee in military service as an equity receivership with the following powers:

...

(8a) With the approval of the judge in each instance, to obtain the digital assets of the absentee in military service, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 5. G.S. 28C-8 reads as rewritten:

"28C-8. Powers and duties of permanent receiver.

The permanent receiver shall under the direction of the judge administer the absentee's property as an equity receivership with the following powers:

...

(8a) With the approval of the judge in each instance, to obtain the digital assets of the absentee, as provided in Chapter 36F of the General Statutes, including catalogues and content, to request and authorize disclosure of the digital assets.

...."

SECTION 6. G.S. 32-27 reads as rewritten:

"§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

...

(32) Obtain Digital Assets. – To obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, [by any fiduciary as provided in Chapter 36F of the General Statutes,] and to request and authorize disclosure of the digital assets."

SECTION 7. G.S. 32A-1 reads as rewritten:

"§ 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____

County of _____

I _____, appoint _____ to be
my attorney-in-fact, to act in my name in any way which I could act for myself,
with respect to the following matters as each of them is defined in Chapter 32A of
the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any
one or more of the subdivisions as to which the principal desires to give the
attorney-in-fact authority.)

(1) Real property transactions..... _____

(2) Personal property transactions _____

(2a) Obtain, request and authorize disclosure of
digital assets..... _____

(3) Bond, share, stock, securities and commodity
transactions _____

(4) Banking transactions..... _____

(5) Safe deposits _____

(6) Business operating transactions _____

(7) Insurance transactions _____

(8) Estate transactions..... _____

(9) Personal relationships and affairs _____

(10) Social security and unemployment _____

(11) Benefits from military service _____

(12) Tax matters..... _____

(13) Employment of agents _____

(14) Gifts to charities, and to individuals other

than the attorney-in-fact..... _____

(15) Gifts to the named attorney-in-fact..... _____

(16) Renunciation of an interest in or power over property

to benefit persons other than the attorney-in-fact..... _____

(17) Renunciation of an interest in or power over property

To benefit persons including the attorney-in-fact..... _____

(If power of substitution and revocation is to be given, add: 'I also give to such

person full power to appoint another to act as my attorney-in-fact and

full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power
terminates_____, _____')

(If power of attorney is to be a durable power of attorney under the
provision of Article 2 of Chapter 32A and is to continue in effect after the
incapacity or mental incompetence of the principal, add: 'This power of attorney
shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental
incompetence of the principal, add: 'This power of attorney shall become effective
after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the
administration of a custodial trust created under the Uniform Custodial Trust Act,
add: 'In the event of my subsequent incapacity or mental incompetence, the

attorney-in-fact of this power of attorney shall have the power to terminate or to
direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary
under the Uniform Custodial Trust Act is incapacitated or ceases to be
incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the
power to determine whether I am incapacitated or whether my incapacity has
ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated _____, _____ .

_____(Seal)

Signature

STATE OF _____ COUNTY OF _____

On this _____ day of _____, _____, personally appeared before
me, the said named _____ to me known and
known to me to be the person described in and who executed the foregoing
instrument and he (or she) acknowledged that he (or she) executed the same and
being duly sworn by me, made oath that the statements in the foregoing
instrument are true.

My Commission Expires _____.

(Signature of Notary Public)

Notary Public (Official Seal)"

SECTION 8. G.S. 32A-2 reads as rewritten:

"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

...

(2a) Obtain, Request and Authorize Disclosure of Digital Assets. – To obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

SECTION 9. G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 10. G.S. 35A-1252 reads as rewritten:

"§ 35A-1252. Guardian's powers in administering minor ward's estate.

In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 11. G.S. 36C-8-816 reads as rewritten:

"§ 36C-8-816. Specific powers of trustee.

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-110;~~ and G.S. 28A-22-110;

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental ~~law;~~ law; and

(33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

**PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF
OFFICIAL AND DRAFTERS COMMENTS**

SECTION 12. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Revised Uniform Fiduciary Access to Digital Assets Act (2015) and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 13. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 14. This act is effective when it becomes law.